

CAUSE NO. _____

2006-42242

ASSESSED
ENTERED <i>[Signature]</i>
VERIFIED <i>[Signature]</i>

STEPHEN BROWNELL, INDIVIDUALLY §
AND DERIVATIVELY ON BEHALF OF §
AMPRO ENERGY, L.P. §

Plaintiff,

V. §

AMY GASCA and AMPRO ENERGY GP, §
LLC §

Defendants. §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

240 JUDICIAL DISTRICT

FILED
DISTRICT CLERK
HARRIS COUNTY, TEXAS
2006 JUL 10 AM 11:36
BY *[Signature]*

**PLAINTIFFS' VERIFIED ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
AND APPLICATION FOR TEMPORARY AND PERMANENT
INJUNCTION, MOTION FOR EXPEDITED DISCOVERY, AND
ALTERNATIVELY APPLICATION FOR APPOINTMENT OF A RECEIVER**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Stephen Brownell ("Brownell"), individually and derivatively on behalf of AmPro Energy, L.P., files this Verified Original Petition, Application for Temporary Restraining Order, Application for Temporary and Permanent Injunction, and Alternately Application for Appointment of Receiver, complaining of Defendants Amy Gasca and AmPro Energy GP LLC and for cause of action, would respectfully show the Court the following:

A.

DISCOVERY LEVEL OR "TRACK"

1. Plaintiff requests that this case be treated as a Level Three case, pursuant to Texas Rule of Civil Procedure 190.



B.
PARTIES

2. Plaintiff Stephen Brownell is an individual citizen of the State of Texas and resides in Harris County, Texas.
3. Plaintiff AmPro Energy L.P. is a Texas limited Partnership.
4. Defendant Amy Gasca ("Gasca") is an individual citizen of the State of Texas and may be served with process at 19747 Hwy. 59 North, Suite 250, Humble, Texas 77338.
5. Defendant AmPro Energy GP LLC is a Texas limited liability company and may be served with process by serving Amy Gasca, its President, at its offices at 19747 Hwy. 59 North, Suite 250, Humble, Texas 77338.

C.
JURISDICTION AND VENUE

6. The Court maintains subject matter jurisdiction over this matter because the amount in controversy is within the jurisdictional limits of this Court.
7. Venue is proper in Harris County, Texas because all or a substantial part of the events giving rise to the cause of action asserted herein took place in Harris County, Texas and because the business at issue in this case is located in Harris County, Texas.

D.
FACTS

8. The following facts are supported by Plaintiff Stephen Brownell's affidavit, which is attached as Exhibit "A" and is incorporated by reference as if fully stated herein.
9. In late 2005, AmPro Energy GP LLC (the "General Partner") determined that it was necessary for the Partnership to withdraw from the Texas retail electricity market and to cease providing retail electric service.

10. As part of that cessation of services, Plaintiff petitioned for and received¹ from the Public Utility Commission of Texas ("PUCT") permission to surrender its certificate as a retail electricity provider. The Surrender Order conditioned the Partnership's surrender of its certificate upon the Partnership's agreement to refund all customer deposits. (See PUCT Order; Ex. B).

11. Plaintiff Brownell's role as General Counsel for the Partnership ended on March 31, 2006.

12. Defendant Gasca is the President and sole shareholder of the General Partner and the Chief Executive Officer for Plaintiff Partnership, and, as such, has been exclusively in-charge of the day-to-day operations of the Partnership since March 31, 2006.

13. In June 2006, Plaintiff Brownell had an opportunity to personally inspect the accounting and business records of the Partnership at the Partnership's offices and speak with Defendant Gasca. At that time, he learned that Defendant Gasca had been misappropriating Partnership property.

14. Specifically, Defendant Gasca has used and is using Partnership funds from the Partnership's Operating Account to write Partnership checks to third-parties for personal purposes, including, but not limited to 1) \$50,000 to pay for a college fund for her children; 2) \$25,000 in personal legal fees her divorce attorney; 3) untold payments to family relatives who are not legally authorized to be employed in the United States; and 4) \$5,000 in court-ordered spousal support to her estranged husband. On several occasions during the last six months, Defendant Gasca has written checks to third-parties, which Plaintiff Brownell discovered by

¹ "Notice of Approval to Surrender", Docket 32242, Public Utility Commission of Texas, March 6, 2006 (the "Surrender Order").

reviewing a check detail report. However, nowhere do these third-party checks appear as Partnership expenses.

15. Although monies from the Partnership's Operating Account had been earmarked for the payment of refunds to customers in accordance with the Surrender Order, Defendant Gasca informed Plaintiff Brownell that those funds had not yet been repaid to customers. Upon information and belief, and Plaintiff Brownell's examination of the Partnerships accounts, those funds have not been returned to the customers because Defendant has depleted the Partnership's Operating Account. Having used at least \$100,000.00 of the Operating Account funds for her own personal use, the Operating Account now lacks sufficient funds to repay the customer.

16. Failure to repay the customer deposits places the Partnership at grave risk. Such failure could result in severe civil and administrative fines and penalties for violating the PUCT Surrender Order. It could result in litigation with the customers. All of which threatens the financial integrity and stability of the Partnership.

17. Defendant Gasca's use of the Operating Account as her own personal checking account also breaches an agreement between Defendants and Plaintiffs. On or about December 30, 2005, Plaintiff Brownell and others entered into a Workout Agreement with Plaintiff Partnership and Defendants Gasca and the General Partner. (See Workout Agreement, ¶3; Ex. C).

18. Pursuant to the terms of the Workout Agreement, the General Partner, and Defendant Gasca as CEO, were specifically required to use Partnership property only for the winding up the business of the Partnership and for no other purpose -- "all Partnership Property shall be used exclusively for purposes of winding up the retail electric business..." (See Workout Agreement, ¶3; Ex. C).

19. Beyond utilizing Partnership assets for personal gain, Defendants have mismanaged Partnership assets. Defendants sold valuable Partnership assets in the form of software and hardware to Glacial Energy Holdings well below fair market value. The software was created and developed by Plaintiff Partnership at a cost well in excess of \$400,000.00. Defendants had been provided information that the fair market value of the software was in excess of \$400,000.00. Nevertheless, Defendants sold the software to Glacial for \$75,000.00. There is no commercially reasonable basis for having sold the software for such a reduced price.

20. Instead, it appears that the software was sold at a dramatically discounted price to Glacial Energy in exchange for Defendant Gasca receiving a valuable consulting contract and wholesale trading relationship with Glacial. Indeed, Defendants entered into this transaction with Glacial when a serious conflict of interest existed. Upon information and belief, Defendant Gasca entered into a consulting agreement with Glacial, and Defendant Gasca's company, AmPro Energy Wholesale LP, is supplying wholesale power to Glacial. Given Defendant Gasca's business dealings with Glacial, it is not surprising she was willing to sell the software and make available the Partnership's offices, phone lines, hardware and personnel available to Glacial.

21. Glacial now has access to servers and computer hardware at the Partnership's office. There does not appear to be any agreement with Glacial for it to utilize this equipment nor occupy the Partnership's office space, equipment and phone lines. By allowing Glacial unfettered access, Defendants have squandered valuable Partnership assets in the form of all stored documents on the servers, which contain valuable information about the Partnership's proprietary information and processes. This information is readily marketable, and a competitor of the Partnership would easily pay hundreds of thousands of dollars for this information.

22. Because I am no longer an employee of Plaintiff Partnership, I am not privy to the most of the winding-up of the business affairs of Plaintiff. The only person who is in charge of those affairs is Defendant Gasca, and she is secreting Partnership funds for personal gain. If she is allowed to continue, she will deplete the resources of the Partnership, thereby harming the Partnership and the limited partners' interests in the Partnership. With the Partnership having little or no money left, there will be no available avenue of relief for the limited partners. Therefore, Defendants conduct must be halted, because there is irreparable injury to the limited partners with no adequate remedy at law.

E.
CAUSES OF ACTION

COUNT 1
Temporary Restraining Order Against Defendants

23. Plaintiff is entitled to an immediate temporary restraining order to maintain the status quo until a trial on the merits can be had. The status quo is the last, actual, peaceable, non-contested status that preceded the controversy. To preserve the status quo, it is essential that the Court act immediately. Plaintiff has a probable right to relief based on the egregious conduct of Defendants. As a result of such conduct, Plaintiff is experiencing imminent harm to his Partnership interest in Plaintiff AmPro Energy, LP. Additionally, because of Defendant Gasca's actions, Plaintiff Partnership is threatened with imminent harm to its business, business reputation, and goodwill. The Partnership's assets are being depleted by Defendants. The damage to Plaintiffs is permanent and irreparable, because Plaintiff Partnership is no longer able to wind up its affairs. Plaintiff Stephen Brownell has no adequate remedy at law, because Plaintiff AmPro Energy is no longer in business of selling retail electricity; therefore, the ability to collect money damages is not viable. Plaintiffs are likely to succeed at a trial, because the

conduct of the Defendants is so egregious and a blatant violation of the laws of the State of Texas.

24. The exigent circumstances surrounding the continued depletion of the Partnership's assets warrant the issuance of the Temporary Restraining Order *ex parte*. On June 20, 2006, Plaintiff Stephen Brownell placed Defendants on notice of his claims and gave them a deadline to respond by July 5, 2006. To date, Defendants have not responded. It is Plaintiff's belief that Defendants are continuing to deplete Partnership assets.

25. Plaintiff requests this Court to enter a temporary restraining order *ex parte*, pending this Court's ruling on Plaintiff's Application for Temporary Injunction, that orders:

- a. Defendants to immediately return all monies utilized for personal expenses, including, payments for education funds for Defendant Gasca's children, payments to divorce lawyer, and payments for spousal support into the Partnership's operating account;
- b. Defendants to provide an accounting to Plaintiff of all monies withdrawn from all the accounts of the Partnership; and
- c. Defendants to stop issuing any further payments to anyone without Plaintiff Stephen Brownell's express written approval.

COUNT 2

Temporary and Permanent Injunctive Relief Against Defendants

26. Plaintiff has demonstrated a likelihood of success on the merits and that a balancing of equities favors the issuance of a temporary and eventual permanent injunction against Defendants. Plaintiff will be irreparably damaged by harm to his Partnership interest. Plaintiff has demonstrated he has no adequate remedy at law.

27. Further, this Court has the power to enjoin Defendants, because Defendants have demonstrated conduct that will render any judgment against them ineffectual based on Defendant Gasca's propensity to secrete and deplete Partnership assets. See TEX. CIV. PRAC. & REM. CODE §65.011(2).

COUNT 3

Breach of Contract Against Defendants

28. Defendants entered into a contract with Plaintiff in which the Partnership's property was to be exclusively used for the winding down of the Partnership's business. By siphoning funds for personal expenses, Defendants have breached their agreement with Plaintiff. As a result Plaintiff, has been damaged.

COUNT 4

Breach of Fiduciary Duty Against Defendants

29. As a shareholder and officer of Plaintiff AmPro Energy, LP, Defendant Amy Gasca owed the company and Plaintiff various duties. Based on the conduct of Defendant, Defendant has breached those fiduciary duties in violation of Texas law. As a result, Plaintiff has been damaged.

COUNT 5

Common Law Fraud Against Defendants

30. Defendants made numerous material representations to Plaintiff regarding the use of Partnership assets. The material representations were false. At all relevant times, Defendants knew the representations were false and/or made the representations recklessly, as a positive assertion, and without knowledge of its truth. These representations were made with the intent to get Plaintiff to act on them. To his detriment, Plaintiff relied on these representations by Defendants. Plaintiff has suffered severe damages as a result of the representations by Defendants.

COUNT 6
Conversion Against Defendants

31. Based on the conduct of Defendants, Defendants have exercised dominion and control over Partnership assets to the exclusion of and inconsistent with the rights of Plaintiff. Despite numerous requests by Plaintiff to inquire about the status of those funds, Defendant has refused to remit payment of those funds to Plaintiff. Therefore, Defendants have converted the monies of the Partnership for their own personal gain, which has damaged Plaintiff.

COUNT 7
Unjust Enrichment Against Defendants

32. Based on the conduct of Defendants, Defendants have personally gained by secreting Partnership assets for personal gain. Plaintiff is entitled to a full refund of those monies. Defendants have been unjustly enriched at the expense of Plaintiff.

COUNT 8
Constructive Trust Against Defendants

33. Based on the conduct of Defendants, Defendants perpetrated a fraud upon Plaintiff, by duping Plaintiff into entering into business with Defendants for Defendants' personal gain and benefit.

34. Defendants benefited from this fraud by extracting monies for personal gain. Based on the fraud perpetrated by this Defendants by which Defendants have been unjustly enriched, Plaintiff requests this Court to invoke its equitable powers and impose a constructive trust on the funds extracted by Defendants for personal gain.

COUNT 9
Accounting Against Defendants

35. Plaintiff seeks an accounting of all of the books of AmPro Energy, LP.

COUNT 10
Alternatively, Application for Appointment of Receiver

36. In the alternative, pursuant to TEX. CIV. PRAC. & REM. CODE §64.001, Plaintiff requests this Court to immediately appoint a receiver to take an accounting of all assets of Plaintiff AmPro Energy, LP and to secure all the assets of secreted by Defendants.

37. Receivership is necessary to conserve the assets of the company and avoid irreparable injury to the company and its shareholders. Given the severity of Defendants' improper conduct described herein, other remedies, including appointment of a receiver for specific assets, are inadequate.

38. Plaintiff requests that the receiver's authority over the business and assets of Plaintiff AmPro Energy, LP be subject only to the Court and/or a written directive of all shareholders of Plaintiff.

39. Plaintiff stands ready to post bond.

F.
MOTION FOR EXPEDITED DISCOVERY

40. Given the exigent circumstances of this case and the fact that Plaintiff has requested Level III discovery, Plaintiff requests this Court to grant Plaintiff's request for conducting expedited discovery, which request includes taking the depositions of Defendant Amy Gasca. Plaintiff requests this Court to Order the taking of these depositions well in advance of the Temporary Injunction Hearing to be scheduled by this Court.

G.
RELIEF SOUGHT

COUNT 1
Damages

41. Plaintiff requests that the Court award his actual and consequential damages as proven at the time of trial.

COUNT 2
Punitive Damages

42. Because Defendants have, by clear and convincing evidence, acted with actual malice or fraud with respect to the harms discussed herein, Plaintiff is entitled to and requests an award of punitive damages in accordance with Chapter 41 of the Texas Civil Practice & Remedies Code.

COUNT 3
Attorney's Fees & Costs

43. Due to Defendants' wrongful acts Plaintiff was forced to engage Mahendru, PC to enforce his rights. Plaintiff is entitled to an award of his necessary and reasonable attorneys' fees and costs.

I.
CONDITIONS PRECEDENT

44. Pursuant to Rule 54, Texas Rules of Civil Procedure, Plaintiff maintains that all conditions precedent, if any, for its recovery of the sums due and owing or other relief as alleged herein have been performed or have occurred or have been frustrated by Defendants' actions.

J.
JURY

45. Plaintiffs hereby request a trial by a jury of their peers on all issues.

K.
CONCLUSION AND PRAYER

46. Due to Defendants' wrongful and unlawful acts described herein, Plaintiff seeks the following:

- (a) a temporary restraining order against Defendants as set forth above;
- (b) a temporary and permanent injunction against Defendants;
- (c) actual damages as proven during the trial of this case;

- (d) punitive damages;
- (e) Plaintiffs' necessary and reasonable attorneys' fees and all costs of Court;
- (f) prejudgment and post-judgment interest as provided for by law;
- (g) expedited discovery as requested by Plaintiffs;
- (h) alternatively, appoint a receiver as requested by Plaintiffs; and
- (i) grant such other and further relief to which Plaintiffs are entitled to at law or in equity.

Dated: July 10, 2006

Respectfully submitted,

Mahendru, PC



Ashish Mahendru

State Bar No. 00796980

1111 Bagby, Suite 2000

Houston, Texas 77002-2553

(713) 571-1519 (Telephone)

(713) 651-0776 (Telecopier)

ATTORNEY FOR PLAINTIFFS

CAUSE NO. _____

STEPHEN BROWNELL, INDIVIDUALLY §
AND DERIVATIVELY ON BEHALF OF §
AMPRO ENERGY LP §

Plaintiffs,

V. §

AMY GASCA and AMPRO ENERGY GP, §
LLC §

Defendants. §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

AFFIDAVIT OF STEPHEN BROWNELL

BEFORE ME, the undersigned authority, on this day personally appeared Stephen Brownell, who after being duly sworn by me, upon his oath stated:

1. I, Stephen Brownell, am of sound mind and am over the age of twenty-one. I declare under penalty of perjury that the foregoing is within my personal knowledge and is true and correct.
2. I am a limited partner in Plaintiff AmPro Energy LP (the "Partnership"), and during the time of its operations, I was the General Counsel of Plaintiff Partnership. I own an 11% limited partnership interest in the Partnership.
3. Plaintiff Partnership was in the business of providing retail electric services to businesses in the deregulated parts of Texas.
4. In late 2005, AmPro Energy GP LLC (the "General Partner") determined that it was necessary for the Partnership to withdraw from the Texas retail electricity market and to cease providing retail electric service.



5. As part of that cessation of services, Plaintiff petitioned for and received¹ from the Public Utility Commission of Texas ("PUCT") permission to surrender its certificate as a retail electricity provider. The Surrender Order conditioned the Partnership's surrender of its certificate upon the Partnership's agreement to refund all customer deposits. (See PUCT Order; Ex. B.).

6. My role as General Counsel for the Partnership ended on March 31, 2006.

7. Defendant Gasca is the President and sole shareholder of the General Partner and the Chief Executive Officer for Plaintiff Partnership, and, as such, has been exclusively in-charge of the day-to-day operations of the Partnership since March 31, 2006.

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9. Specifically, Defendant Gasca has used and is using Partnership funds from the Partnership's Operating Account to write Partnership checks to third-parties for personal purposes, including, but not limited to: 1) \$50,000 to pay for a college fund for her children; 2) \$25,000 in personal legal fees her divorce attorney; 3) untold payments to family relatives who are not legally authorized to be employed in the United States; and 4) \$5,000 in court-ordered spousal support to her estranged husband. On several occasions during the last six months, Defendant Gasca has written checks to third-parties, which I discovered by reviewing a check detail report. However, nowhere do these third-party checks appear as Partnership expenses.

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informed me herself that those funds had not yet been repaid to customers. Upon information and belief, and my examination of the Partnerships accounts, those funds have not been returned to the customers because Defendant has depleted the Partnership's Operating Account. Having used at least \$100,000.00 of the Operating Account funds for her own personal use, the Operating Account now lacks sufficient funds to repay the customer.

11. Failure to repay the customer deposits places the Partnership at grave risk. Such failure could result in severe civil and administrative fines and penalties for violating the PUCT Surrender Order. It could result in litigation with the customers. All of which threatens the financial integrity and stability of the Partnership.

12. Defendant Gasca's use of the Operating Account as her own personal checking account also breaches an agreement between Defendants and Plaintiffs. On or about December 30, 2005, I and others entered into a Workout Agreement with Plaintiff Partnership and Defendants Gasca and the General Partner. (See Workout Agreement, ¶3; Ex. C).

13. Pursuant to the terms of the Workout Agreement, the General Partner, and Defendant Gasca as CEO, were specifically required to use Partnership property only for the winding up the business of the Partnership and for no other purpose -- "all Partnership Property shall be used exclusively for purposes of winding up the retail electric business...." (See Workout Agreement, ¶3; Ex. B).

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\$400,000.00. Nevertheless, Defendants sold the software to Glacial for \$75,000.00. There is no commercially reasonable basis for having sold the software for such a reduced price.

15. Instead, it appears that the software was sold at a dramatically discounted price to Glacial Energy in exchange for Defendant Gasca receiving a valuable consulting contract and wholesale trading relationship with Glacial. Indeed, Defendants entered into this transaction with Glacial when a serious conflict of interest existed. Upon information and belief, Defendant Gasca entered into a consulting agreement with Glacial, and Defendant Gasca's company, AmPro Energy Wholesale LP, is supplying wholesale power to Glacial. Given Defendant Gasca's business dealings with Glacial, it is not surprising she was willing to sell the software and make available the Partnership's offices, phone lines, hardware and personnel available to Glacial.

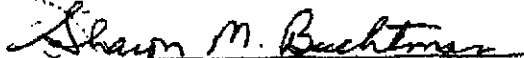
16. Glacial now has access to servers and computer hardware at the Partnership's office. There does not appear to be any agreement with Glacial for it to utilize this equipment nor occupy the Partnership's office space, equipment and phone lines. By allowing Glacial unfettered access, Defendants have squandered valuable Partnership assets in the form of all stored documents on the servers, which contain valuable information about the Partnership's proprietary information and processes. This information is readily marketable, and a competitor of the Partnership would easily pay hundreds of thousands of dollars for this information.

17. Because I am no longer an employee of Plaintiff Partnership, I am not privy to the most of the winding-up of the business affairs of Plaintiff. The only person who is in charge of those affairs is Defendant Gasca, and she is secreting partnership funds for personal gain. If she is allowed to continue, she will deplete the resources of the Partnership, thereby harming the Partnership and the limited partners' interests in the Partnership. With the Partnership having little or no money left, there will be no available avenue of relief for the limited partners.

Therefore, Defendants' conduct must be halted, because there is irreparable injury to the limited partners and to the Partnership with no available adequate remedy at law.


Stephen Brownell

SUBSCRIBED AND SWORN TO BEFORE ME on this the 9th day of July 2006,
which witness my hand and seal.


NOTARY, State of New Jersey
My Commission Expires:
Sharon M. Buchman
Notary Public of New Jersey
My Commission Expires May 18, 2008
2008

Paul Hudson
Chairman

Julie Caruthers Parsley
Commissioner

Barry T. Smitherman
Commissioner

W. Lane Lanford
Executive Director



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PUBLIC UTILITY COMMISSION
FILING CLERK

Public Utility Commission of Texas

TO: Stephen J. Brownell
AmPro Energy
19747 Hwy. 59 N., Ste. 250
Humble, TX. 77338

Electric Industry Oversight Division
Legal Division

RE: Docket No. 32242 – *Application of AmPro Energy LP to Surrender its Retail Electric Provider (REP) Certification*

NOTICE OF APPROVAL TO SURRENDER

This Notice grants AmPro Energy LP's (the Applicant) request to surrender its Retail Electric Provider (REP) Certificate No. 10057. The docket was processed in accordance with applicable statutes and Commission rules. The Commission provided notice of the application to interested parties. More than 15 days have passed since the completion of notice. No protests were filed. The Electric Reliability Council of Texas (ERCOT), TXU Electric Delivery Company, and North Richland Hills Baptist Church intervened in this proceeding, but all requests for intervention were withdrawn. The Applicant and the Commission Staff (Staff) are the only parties to the proceeding. Staff recommends approval of the application, as amended. The application, as amended, is approved.

Statutory Findings

1. The Commission has jurisdiction over this application under PURA¹ § 14.001, 39.001, 39.003, and 39.352.



¹ The Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66.017 (Vernon 1998 & Supp. 2006) (PURA).



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2. The application complies with P.U.C. SUBST. R. 25.107(i)(8).
3. The Applicant is entitled to approval of this application, having affirmed that each customer, that was a customer as of December, 2005, was sent notice of termination on December 10, 2005. Each customer has been transitioned to another REP or the provider of last resort. A 24-hour customer call care center will remain open to respond to customer inquiries until October 1, 2006, at which time the Applicant will notify the Commission whether all outstanding customer billing and payment issues have been resolved, and if not, will provide a summary description of the nature and status of those remaining customer complaints and issues. As final meter reads and cancel/rebills are received, the Applicant is processing refunds to customers. Upon issuance of the final refund check, the Applicant will provide a report from its financial reporting system of all refund checks that have been issued and provide a verified statement to the Commission that all refunds have been returned to the customers.

Applicant's Request

4. The Applicant requested that the Commission approve the request to surrender its REP Certificate No. 10057.

Ordering Paragraphs

1. The application, as amended, of AmPro Energy LP to surrender its REP Certificate No. 10057 is approved.²
2. The Applicant shall notify the Commission within 30 days of any change in its office address, business address, telephone number(s) or contact information.

² Administrative approval of this uncontested application has no precedential value in a future proceeding.

3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS the 6th day of March 2006.

PUBLIC UTILITY COMMISSION OF TEXAS



MICHAEL E. FIELD
DIRECTOR, DOCKET MANAGEMENT

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WORKOUT AGREEMENT

This Workout Agreement (this "Agreement"), dated December 30, 2005 (the "Effective Date"), is by and between AmPro Energy LP, a Texas limited partnership ("AmPro"), and Stephen J. Brownell ("Brownell"), an individual and limited partner of AmPro, Leticia Hemmerly ("Hemmerly"), an individual and limited partner of AmPro, Amy Gasca ("Gasca"), an individual and limited partner of AmPro and AmPro Energy GP LLC, a Texas limited liability company and general partner of AmPro ("AmPro GP LLC"). AmPro, Stephen J. Brownell, Leticia Hemmerly, Amy Gasca and AmPro GP LLC are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. AmPro, Brownell, Hemmerly, Gasca and AmPro GP LLC are parties to that certain Amended and Restated Agreement of Limited Partnership for AmPro Energy LP dated May 11, 2005 (the "Partnership Agreement").

B. The Parties have been engaged in the process of exiting the retail electric business in Texas and desire to provide for an orderly winding up of the Partnership's affairs related to that business, including the potential purchase of the interests of the limited partners, Brownell and Hemmerly.

C. To that end, the Parties have agreed to enter into this Workout Agreement for purposes of setting forth their respective commitments.

D. Capitalized terms not otherwise defined herein shall have the meanings given them in the Partnership Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Workout Agreement. The Parties hereby agree to the terms and conditions set forth herein, under which the Workout Agreement will be implemented. The Parties hereby acknowledge and agree that this Agreement supersedes all oral or written agreements regarding the matters contained herein.

2. Vesting of Percentage Interests. The Parties hereby acknowledge and agree that the Percentage Interests identified in the column entitled "2009" of Schedule A of the Partnership Agreement have fully vested in the Limited Partners, Brownell, Hemmerly and Gasca. Specifically, the Parties acknowledge and agree that Subsection (B) of Section 19.6 of the Partnership Agreement has occurred or has been satisfied in all respects.

3. Use of Partnership Property. The Parties agree that all Partnership Property shall be used exclusively for purposes of winding up the retail electric business in a commercially reasonable manner or is to be liquidated by commercially reasonable means so as to maximize a



financial return to the Partnership. The Parties envision that that current and future cash proceeds during this winding up process will be used for such commercially reasonable expenses as rent, phone, and salaries, but will not be used to pursue or develop new business ventures, acquire equipment or assets unrelated to the liquidation and winding up of the retail electric business or to retain professional or other personnel services not reasonably necessary to the winding up process of the Partnership.

4. Application of Operating Account Proceeds. Any monies held in the operating account of the Partnership (the "Operating Account Proceeds") will be held by will be applied as follows:

(a) Operating Account Proceeds will be used by AmPro for its use in keeping its office operations running until at least January 31, 2006, including payment of rent, employees, phone lines, etc.

(b) Operating Account Proceeds will be used to pay a retention payment to Brownell, Hemmerly and Gasca for professional services rendered directly related to the winding up of the Partnership. That retention payment will determined by mutual Agreement of the Parties, shall be identical, and shall be \$4230.77 bi-weekly subject to periodic review of the financial position of the Company. The retention payments shall continue from January 1, 2006 until March 31, 2006.

(c) Operating Account Proceeds shall be used to contribute to the payment of medical insurance premiums of all employees, including Brownell, Hemmerly and Gasca until at least March 31, 2006, in the same manner as it did in calendar year 2005.

(d) Commencing April 1, 2006, the Operating Account Proceeds shall be used to pay a separation payment to Brownell, Hemmerly and Gasca equal to the rate of retention payment in effect on March 31, 2006 subject to the periodic review of the financial position of the Company. This separation payment shall continue until the earlier of June 30, 2006 or the Liquidating Distributions related to first scheduled release of funds ("First Burnoff") by TXU Portfolio Management ("TXU PM") as part of the escrow agreement entered into between AmPro and TXU PM dated _____ (the "Escrow Agreement"). "Liquidating Distributions" shall have the same meaning as Section 16.3 of the Partnership Agreement.

(e) AmPro represents and warrants that it will pay only business expenditures from its operating account and that it will provide with a true and correct schedule of the expenses to be paid by it from its operating account when requested by either Brownell, Hemmerly or Gasca.

5. Brownell, Hemmerly and Gasca Professional Services. AmPro will enter into a form of separate retention and separation agreement (the "R&S Agreements") with each of Brownell, Hemmerly and Gasca (Exhibit A). These R&S Agreements shall provide at a minimum that Brownell, Hemmerly shall each be paid a retention payment of \$4230.77 bi-weekly until March 31, 2006, shall provide for a contribution of medical insurance premiums

equivalent to contributions made in calendar year 2005, shall provide for a separation payment commencing April 1, 2006 equal to the retention payment in effect as of March 31, 2006, which shall continue until the earlier of June 30, 2006 or the First Burnoff. The R&S Agreements shall also provide that Brownell, Hemmerly and Gasca shall provide professional services to AmPro on an as-needed basis, but, in no event, greater than 40 hours a week for the period January 1, 2006 until March 31, 2006. Such professional services need not be rendered exclusively at any offices leased by AmPro, although AmPro shall make available reasonably necessary office space, support staff and resources if requested. The R&S Agreements shall provide that AmPro may retain Brownell, Hemmerly and Gasca either Brownell, Hemmerly or Gasca upon mutually agreeable terms and conditions.

6. Partnership Distributions. Subject to the Partnership's right to repurchase the Limited Partners interests generally under Article 12 of the Partnership Agreement, and, more specifically, pursuant to Section 7 of this Agreement, the Partnership shall make Liquidating Distributions to each of the Partners on or about the same date(s) that TXU PM periodically releases funds pursuant to the Escrow Agreement (and any amendments thereto).

7. Repurchase of Limited Partnership Interests. Subject to terms and conditions of Article 12 of the Partnership Agreement, the Partnership may repurchase the interests of the Limited Partners, however; notwithstanding Section 12.7 of the Partnership Agreement, such repurchase shall be on terms no less favorable than provided for in Section 6 of this Agreement.

8. Legal Review and Construction. By executing this Agreement, each Party affirms that it is competent, that it has been represented by counsel in connection with the negotiation and preparation of this Agreement, and that it understands and accepts the nature, terms and scope of this Agreement. Each Party hereby acknowledges and agrees that it has not relied upon any statements, representations or warranties made by the other Party in the negotiation of this Agreement that are not set forth herein. The language in all parts of this Agreement shall be construed according to its plain and ordinary meaning. The Parties and their counsel have cooperated in the drafting and preparation of this Agreement and this Agreement therefore shall not be construed against any Party by virtue of its role as the drafter thereof.

9. Governing Law. This Agreement shall be governed in all respects by and construed in accordance with the laws of the State of Texas without regard to its conflicts of laws provisions. Any litigation between the parties with respect to this Agreement or the subject matter contained herein shall be conducted (and exclusive jurisdiction shall lie in) the state and federal courts located in Harris County, Texas.

10. Entire Agreement. This Agreement constitutes the entire and final agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and arrangements, whether written or oral, with respect to such subject matter.

11. Representations and Warranties. Each Party hereby represents and warrants to the other Party that: (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms

and conditions in its formation or governing documents, (b) this Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any defenses pertaining to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, (c) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations hereunder and (d) its entering into this Agreement does not conflict with any of its obligations to any other person.

12. No Waiver. No delay or omission to exercise any right, power, or remedy accruing to any Party upon any breach or default under this Agreement, shall be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any of the Parties, shall be cumulative and not alternative.

13. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable under applicable law, then such provision shall be excluded from this Agreement and the remainder of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms; provided, however, that in such event this Agreement shall be interpreted so as to give effect, to the greatest extent consistent with and permitted by applicable law, to the meaning and intention of the excluded provision as determined by such court of competent jurisdiction.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and enforceable against the parties actually executing such counterpart, and all of which together shall constitute one and the same instrument.

15. Successors and Assigns; Assignment. Except as otherwise expressly limited herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties. None of the rights, privileges, or obligations set forth in, arising under, or created by this Agreement may be assigned by a Party without the prior written consent of the other Party.

16. Further Assurances. Each of the Parties shall perform such further acts and execute such further documents as may reasonably be necessary to carry out and give full effect to the provisions of this Agreement and the intentions of the Parties as reflected hereby.

[The next following page is a signature page.]

IN WITNESS WHEREOF, the Parties have hereby caused this Agreement to be executed and delivered, on the date first above written.

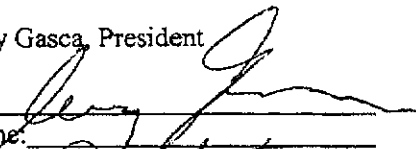
AMPRO ENERGY LP

By: AmPro Energy GP LLC,
its general partner

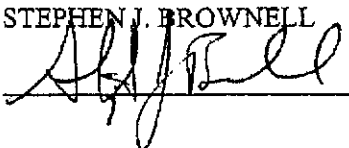
By: 
Amy Gasca, President

AMPRO ENERGY GP LLC

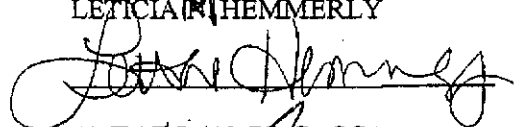
By: Amy Gasca, President

By: 
Name: _____
Title: President

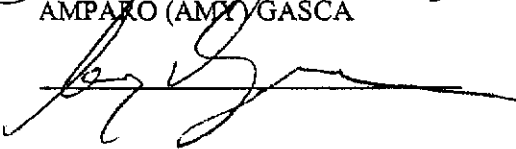
STEPHEN J. BROWNELL



LETICIA M. HEMMERLY



AMPAZO (AMY) GASCA



2006-42242

Cause No. _____

STEPHEN BLOWELL §
Plaintiff ET AL §
AMY GASLA, ET AL §
Defendant §

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
280 JUDICIAL DISTRICT

CIVIL CASE INFORMATION SHEET

This form must be completed and filed with every original petition, and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial.

Service must be obtained promptly. Notice is hereby given that, per Harris County Local Rule 3.6, any case in which no answer has been filed or default judgment signed FOUR (4) MONTHS from filing will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of action: ☒ Commercial ☐ Personal Injury ☐ Death ☐ Other

Check all claims pled:

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Account due | <input type="checkbox"/> Defamation | <input checked="" type="checkbox"/> Fraud | <input type="checkbox"/> Products liability |
| <input type="checkbox"/> Admiralty | <input type="checkbox"/> Disbarment | <input type="checkbox"/> Garnishment | <input type="checkbox"/> Post judgment |
| <input type="checkbox"/> Assault | <input type="checkbox"/> Discrimination | <input checked="" type="checkbox"/> Injunction/TRO | <input type="checkbox"/> Railroad |
| <input type="checkbox"/> Asbestosis | <input type="checkbox"/> Dram shop | <input type="checkbox"/> Insurance bad faith | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Auto | <input type="checkbox"/> DTPA | <input type="checkbox"/> Malicious prosecution | <input type="checkbox"/> Securities fraud |
| <input type="checkbox"/> Bill of review | <input type="checkbox"/> Employment discharge | <input type="checkbox"/> Malpractice/Legal | <input type="checkbox"/> Sequestration |
| <input type="checkbox"/> Conspiracy | <input type="checkbox"/> Expunction | <input type="checkbox"/> Malpractice/Medical | <input type="checkbox"/> Silicone implant |
| <input type="checkbox"/> Contract | <input type="checkbox"/> False imprisonment | <input type="checkbox"/> Name change | <input type="checkbox"/> Tortious interference |
| <input type="checkbox"/> Deed restriction | <input type="checkbox"/> Foreclosure | <input type="checkbox"/> Note | <input type="checkbox"/> Trespass |
| <input type="checkbox"/> Declaratory judgment | <input type="checkbox"/> Forfeiture | <input type="checkbox"/> Premises liability: | <input type="checkbox"/> Workers compensation |
| <input type="checkbox"/> Other _____ | | | |

Has this dispute previously been in the Harris County courts? ☒ No ☐ Yes, in the following court: _____

Monetary damages sought ☐ less than \$50,000 ☐ 50,001 - \$100,000 ☒ greater than \$100,000

Estimated time needed for discovery ☐ 0-3 months ☒ 4-6 months ☐ 7-12 months ☐ >1 year

Estimated time needed for trial: ☐ 1-2 days ☒ 3-5 days ☐ 6-10 days ☐ >10 days

Are you going to request Level 3 status? ☐ Yes ☒ No

If yes, please state your estimate for total hours of deposition per side: _____ and the number of interrogatories needed for each party to serve on any other party: _____

Name of party filing this cover sheet: _____

Signature of attorney or pro se filing cover sheet: Darsh Mahendru

Name printed: DARSH MAHENDRU

Phone No: 713 571 519

Bar No: 8076880

FOR COURT USE ONLY:

Track assigned

☒ Track 1

☐ Track 2

☐ Track 3

Court Coordinator: _____

Date: _____

COURT

FILED
DISTRICT CLERK
HARRIS COUNTY, TEXAS
2006 JUL 10 AM 11:36
BY DEPUTY

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: 2006-42242

CURRENT COURT: 288

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): _____

FILE DATE OF MOTION: _____

Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: AMY GASCA

ADDRESS: 19747 HWY. 59 NORTH #250, HUMBLE, TX 77338

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

☒ ATTORNEY PICK-UP

☐ CONSTABLE

☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____

Phone: _____

☐ MAIL

☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: _____

☐ OTHER, explain _____

2. NAME: AMPRO ENERGY GP LLC

ADDRESS: 19747 HWY. 59 NORTH #250, HUMBLE, TX 77338

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

☒ ATTORNEY PICK-UP

☐ CONSTABLE

☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____

Phone: _____

☐ MAIL

☐ CERTIFIED MAIL

☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or

☐ NEWSPAPER OF YOUR CHOICE: _____

☐ OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: ASHLEY MATTEO TEXAS BAR NO./ID NO. 00796980

MAILING ADDRESS: 1111 BAGLEY #2000, HOUSTON, TX 77002

PHONE NUMBER: 713 5711519 FAX NUMBER: 713 6510716

area code

phone number

area code

fax number

EMAIL ADDRESS: _____

SERVICE REQUESTS WHICH CANNOT BE PROCESSED BY THIS OFFICE WILL BE HELD FOR 30 DAYS PRIOR TO CANCELLATION. FEES WILL BE REFUNDED ONLY UPON REQUEST, OR AT THE DISPOSITION OF THE CASE. SERVICE REQUESTS MAY BE REINSTATED UPON APPROPRIATE ACTION BY THE PARTIES.